

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION

RECEIVED

PATRICIA BURKETT,
Administratrix of the Estate of
JEREMY BURKETT, deceased,

Plaintiff,

v.

TIMOTHY EUGENE MCCRAY and
S.E.LUMBER COMPANY,

Defendants,

2006 AUG 29 A 10:32

U.S. DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO.:

1:06 CV 775 -

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, *et. sec.*, Defendants, TIMOTHY EUGENE MCCRAY ("McCray") and SOUTHEAST LUMBER COMPANY, INC. ("Southeast"), incorrectly described in the complaint as S. E. LUMBER COMPANY, hereby give notice of removal of this action from the Circuit Court of Houston County, Alabama, where it is now pending, to the United States District Court for the Middle District of Alabama. A copy of all process, pleadings and orders served upon Defendants, which include the Summons and Complaint, is attached hereto as Exhibit "A". As grounds for this removal, Defendants state as follows:

INTRODUCTION

1. The Plaintiff, PATRICIA BURKETT, as mother of JEREMY BURKETT,

deceased, filed Summons and Complaint on August 2, 2006, in the Circuit Court of Houston County, Alabama, bearing civil action number CV-06-462-H, naming one individual Defendant, McCray, and one corporate defendant, Southeast.

2. The Plaintiff makes claim for the wrongful death of her son as the result of a two-vehicle accident that occurred on October 14, 2005 in Houston County, Alabama. The Plaintiff claims that McCray negligently operated a vehicle while acting as a duly authorized agent for Southeast. The Plaintiff seeks punitive damages against the Defendants. The Plaintiff does not specify the amount of damages she seeks in the complaint.
3. It is the understanding and belief of the defendants that the named Plaintiff, PATRICIA BURKETT, is a resident citizen of the State of Alabama.
4. The complaint avers that McCray is a resident citizen of the State of Georgia. The complaint further avers that the Defendant, Southeast, is an authorized business with offices at 320 Ballpark Avenue, Damascus, Georgia.
5. At the time of this filing, Southeast and McCray were properly served defendants.
6. As more fully set out below, this case is properly removed to this Court pursuant to 28 U.S.C. §1441 because this Court has subject matter jurisdiction

over this action pursuant to 28 U.S.C. § 1332 and McCray and S.E. Lumber have satisfied the procedural requirements for removal as discussed further below.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 because this is a civil action between citizens of different states, the plaintiff seeks punitive damages for wrongful death, and while the complaint does not specify a specific monetary ad-damnum, these defendants believe that the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. The amount in controversy has been specifically discussed by counsel for these Defendants and counsel for the Plaintiff (Mr. Tommy R. Scarborough), and the Plaintiff, by and through counsel of record, has not advised counsel for these defendants that they are not seeking in excess of \$75,000.00.

COMPLETE DIVERSITY OF CITIZENSHIP EXISTS

8. The Plaintiff, PATRICIA BURKETT, as mother of JEREMY BURKETT, deceased, is believed to be a resident citizen of the State of Alabama.
9. The defendant, Southeast, is a corporation organized and existing under the laws of the State of Georgia, with its corporate offices and principal place of business located in Damascus, Georgia. See attached affidavit of Brenton

Woodfin Warr, attached hereto as Exhibit "C".

10. The Defendant, McCray, is a resident citizen of the State of Georgia, as alleged in the complaint, as is set forth in the attached affidavit of McCray, attached hereto as Exhibit "D".

THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

11. The amount in controversy requirement is satisfied in this case as the Plaintiff seeks punitive damages for the wrongful death of her deceased son. *See Complaint ¶'s 1 through 5.* It is the understanding and belief of these moving Defendants that the amount in controversy clearly exceeds \$75,000.00 exclusive of interest and cost. *See e.g., Tapscott, 77 F. 3d 1359 (11th Cir. 1996)* (when Plaintiff makes an unspecified claim for damages, the removing party only need to show by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional limit). Also, see paragraph seven (7) above.

THE OTHER PREREQUISITES FOR REMOVAL HAVE BEEN SATISFIED

12. This Notice of Removal is timely because it is being filed within thirty (30) days of the time that the Defendants, Southeast and McCray, were served with the Complaint, and within one (1) year after this case was filed. *See 28 U.S.C.*

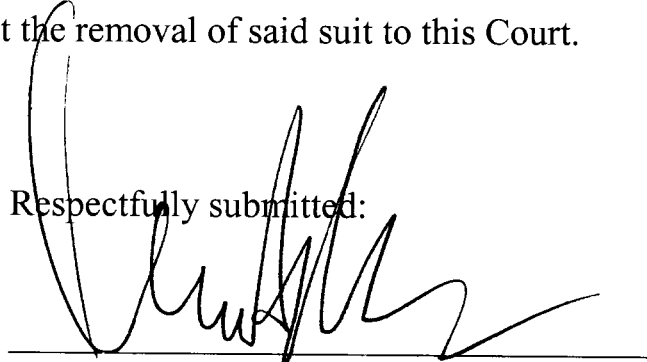
§ 1446.

13. The United States District Court for the Middle District of Alabama embraces the county in which the state court action is now pending. Therefore, this court is the proper venue for this action pursuant to 28 U.S.C. § 1411(a).
14. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders served upon defendants, which include the Summons and Complaint, is attached hereto as Exhibit "A". Pursuant to 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal is attached hereto as Exhibit "B", together with the Notice of Removal, will be served upon counsel for Plaintiff and will be filed with the clerk of the state court in which the action is currently pending.
15. If any questions arise as to the propriety of the removal of this action, the removing Defendants respectfully request the opportunity to conduct limited discovery and to present a brief and oral argument in support of its position of this cases removal.

WHEREFORE, PREMISES CONSIDERED the Defendants, TIMOTHY EUGENE MCCRAY and SOUTHEAST LUMBER COMPANY, INC., incorrectly described in the complaint as S. E. LUMBER COMPANY, desiring to remove this case to the United States District Court for the Middle District of Alabama, Southern Division, being the district of said court for the county in which the said action is

pending, pray that the filing of this Notice of Removal with this Court and the filing of Notice of Filing of Notice of Removal with the clerk of the Circuit Court of Houston County, Alabama shall effect the removal of said suit to this Court.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'William A. Mudd', is written over a horizontal line.

William A. Mudd (ASB-4274-U79W)

Attorney for Defendants, Timothy Eugene McCray and Southeast Lumber Company, Inc.

OF COUNSEL:

Miller, Hamilton, Snider & Odom, L.L.C.
505 North 20th Street
Financial Center—Suite 1200
Birmingham, AL 35203
Phone: 205-226-5200
Fax: 205-225-5226
billmudd@mhsolaw.com

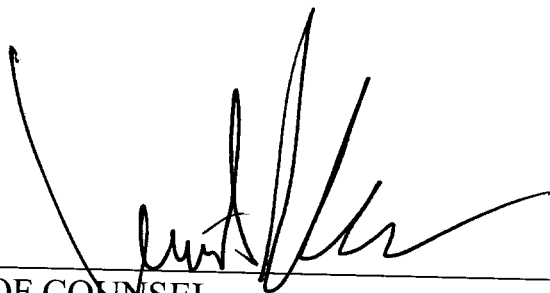
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing pleading on counsel as follows by placing same in the United States Mail, properly addressed and first-class postage prepaid on this the 28th day of August, 2006.

Attorneys for Plaintiff:

Mr. Tommy R. Scarborough
P. O. Box 994
Geneva, Alabama 36340
(334) 684-8729

Mr. David L. Harrison
P. O. Box 994
Geneva, Alabama 36340
(334) 684-8729



OF COUNSEL

EXHIBIT “A”

08/16/2006 13:09 2292464862

REYNOLDS JEFFORDS IN

PAGE 10

FROM : SOUTHEAST FOREST

PHONE NO. : 912 725 3410

Aug. 16 2006 09:45AM P2

AVSO350

ALABAMA JUDICIAL DATA CENTER
HOUSTON COUNTY

SUMMONS

CV 2006 000452.004

8-15-06
11:00 A.M.IN THE CIRCUIT COURT OF HOUSTON COUNTY
PATRICIA BURKETT VS TIMOTHY EUGENE MCCRAY AND S E LUMBER COMPANY

SERVE ON: (D002)

SSN: 000-00-0000

S E LUMBER COMPANY
320 BALLPARK AVENUE

DAMASCUS, GA 39841-0000

PLAINTIFF'S ATTORNEY

SCARBOROUGH TOMMY RAY

115 S. FOSTER ST.

SUITE 101 P.O. BOX 2101

DOTHAN, AL 36301-0000

TO THE ABOVE NAMED DEFENDANT:

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO MAIL OR HAND DELIVER A COPY OF A WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE PLAINTIFFS ATTORNEY(S) SHOWN ABOVE OR ATTACHED:

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGEMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. YOU MUST ALSO FILE THE ORIGINAL OF YOUR ANSWER WITH THE CLERK OF THIS COURT.

() TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY EITHER RULES 4.1(B)(2) OR 4.2(B)(3) OR 4.4(B)(2) OF THE ALABAMA RULES OF CIVIL PROCEDURE. YOU ARE HEREBY COMMANDED TO SERVE THIS SUMMONS AND A COPY OF THE COMPLAINT IN THIS ACTION UPON DEFENDANT.

☒ THIS SERVICE BY CERTIFIED MAIL OF THIS SUMMONS IS INITIATED UPON THE WRITTEN REQUEST OF DEFENDANT PURSUANT TO RULE 4.1(C) OF THE ALABAMA RULES OF CIVIL PROCEDURE.

DATE: 08/04/2006

Judy Byrd
CLERK: JUDY BYRD
PO BOX 6426
DOTHAN AL 36302

RETURN ON SERVICE:

() CERTIFIED MAIL RETURN RECEIPT IN THIS OFFICE ON (DATE) _____
(RETURN RECEIPT HERETO ATTACHED)

() I CERTIFY THAT I PERSONALLY DELIVERED A COPY OF THE SUMMONS AND COMPLAINT TO _____

IN _____ COUNTY, ALABAMA ON (DATE) _____

DATE _____

SERVER SIGNATURE _____

SERVER ADDRESS _____

TYPE OF PROCESS SERVER _____

OPERATOR: LIL
PREPARED: 08/04/2006

08/16/2006 13:09 2292464862

REYNOLDS JEFFORDS IN

PAGE 03

1

FROM : SOUTHEAST FOREST

PHONE NO. : 912 725 3412

Aug. 15 2006 09:47AM P3

IN THE CIRCUIT COURT OF
HOUSTON COUNTY, ALABAMA
CIVIL DIVISION

AUG 02 2006

PATRICIA BURKETT, Administratrix
of the Estate of JEREMY BURKETT,
deceased,

PLAINTIFF,

VS.

TIMOTHY EUGENE MCCRAY and
S.E. LUMBER COMPANY,

DEFENDANT(S).

CASE NO.: CV-2006-462 H

COMPLAINT FOR WRONGFUL DEATH

COMES NOW, Patricia Burkett, the duly qualified Administratrix of the Estate of Jeremy Burkett, deceased, and for her complaint on behalf of the said Estate states as follows:

1. That the plaintiff is also the mother of the decedent, Jeremy Burkett, whose wrongful death occurred in Houston County, Alabama at State Highway 52 and Houston County Road 33.
2. Said death of the plaintiff's deceased son occurred on October 14, 2005 when defendant Timothy Eugene McCray so negligently and carelessly operated the vehicle he was driving at said place and on said date as to cause the said vehicle to collide with the vehicle decedent was driving with such force and violence as to wrongfully cause the death of Jeremy Burkett.
3. That the individual defendant, Timothy Eugene McCray was the duly authorized agent of the defendant, S.E. Lumber Company at the time, place and circumstance of the said collision.
4. That defendant, Timothy Eugene McCray is a resident of the State of Georgia residing at P.O. Box 161, Damascus, Georgia. He is an adult citizen of the United States and is one of the defendant's sued in his own capacity.

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REYNOLDS JEFFORDS IN

PAGE 04

2

FROM : SOUTHEAST FOREST

PHONE NO. : 912 725 3410


Aug. 15 2006 09:47AM P4


5 The defendant, S.E. Lumber Company is a duly organized business with offices at 320
 Ballpark Avenue, Damascus, Georgia and is sued in that capacity.

WHEREFORE, Plaintiff prays for such damages for the said wrongful death and the
 evidence will disclose.

RESPECTFULLY SUBMITTED this the _____ day of _____, 2006


 PATRICIA BURKETT, Plaintiff
 Administratrix of the Estate of Jeromy Burkett


 TOMMY R. SCARBOROUGH (SCA010)
 Counsel for Plaintiff
 P.O. Box 994
 Geneva, Alabama 36340
 (334) 684-8729


 DAVID J. HARRISON (HAR/49)
 Counsel for Plaintiff
 P.O. Box 994
 Geneva, Alabama 36340
 (334) 684-8729

STATE OF ALABAMA,)

GENEVA COUNTY,)

Before me personally appeared, PATRICIA BURKETT, and being first duly sworn deposes
 and says that she is the plaintiff in the above styled cause and that being informed of the contents of
 the foregoing that all matters alleged herein are true and correct.


 PATRICIA BURKETT

08/16/2006 13:09 2292464862

REYNOLDS JEFFORDS IN

PAGE 05

3

FROM : SOUTHEAST FOREST

PHONE NO. : 912 725 3410

Aug. 16 2006 09:46AM P5

Sworn and subscribe to before me this the 11th day of May, 2006.

Patricia Broyles

NOTARY PUBLIC

My Commission Expires: 1-22-07**JURY DEMAND**

Plaintiff demands a trial by a struck Jury.

Tommy R. Scarborough
TOMMY R. SCARBOROUGH (SCA010)

Counsel for Plaintiff

P.O. Box 994

Geneva, Alabama 36340

(334) 684-8729

David J. Harrison
DAVID J. HARRISON (HAR 199)

Counsel for Plaintiff

P.O. Box 994

Geneva, Alabama 36340

(334) 684-8729

PLEASE SERVE DEFENDANT(S) AT:

Timothy Eugene McCray

P.O. Box 161

Damascus, Georgia 39841

S.E. Lumber Company

320 Ballpark Avenue

Damascus, Georgia 39841

EXHIBIT “B”

IN THE CIRCUIT COURT OF HOUSTON COUNTY, ALABAMA

PATRICIA BURKETT, Administratrix
of the Estate of JEREMY BURKETT,
deceased,

Plaintiff,

v.

TIMOTHY EUGENE MCCRAY and
S.E. LUMBER COMPANY,

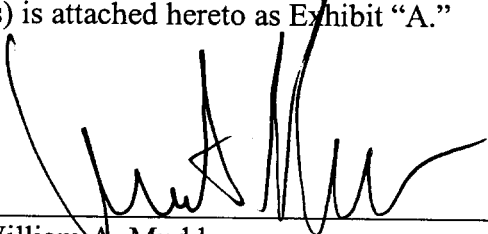
Defendants.

CIVIL ACTION NO.: CV-06-462-H

NOTICE OF FILING NOTICE OF REMOVAL

To: Judy Byrd
Circuit Clerk
Houston County Circuit Court
P.O. Drawer 6406
Dothan, AL 36302-6406

Please take notice that on this the 28th day of August, 2006, the above-styled action was removed by Defendants Timothy Eugene McCray and Southeast Lumber Company, incorrectly identified in the Plaintiff's Complaint as S.E. Lumber Company, to the United States District Court for the Middle District of Alabama by filing a Notice of Removal in said court. A true and correct copy of the Notice of Removal (without exhibits) is attached hereto as Exhibit "A."



William A. Mudd
Attorney Code No.
State : MUD001
Federal : ASB-4274-U79W
Attorney for Tubular Steel, Inc.

OF COUNSEL:

Mr. William A. Mudd
MILLER, HAMILTON, SNIDER & ODOM, L.L.C.
505 North 20th. Street
1200 Financial Center
Birmingham, Alabama 35203
(205) 226-5200
(205) 226-5226 Fax
billmudd@mhsolaw.com

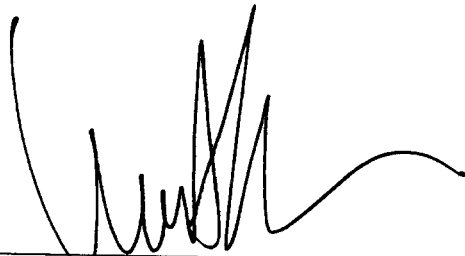
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon the following by placing a copy of same in the United States mail, first class postage prepaid, on this the 28 day of August, 2006.

LIST OF ATTORNEYS:

Mr. Tommy R. Scarborough
P. O. Box 994
Geneva, Alabama 36340
(334) 684-8729

Mr. David L. Harrison
P. O. Box 994
Geneva, Alabama 36340
(334) 684-8729



OF COUNSEL

EXHIBIT “C”

IN THE CIRCUIT COURT OF HOUSTON COUNTY, ALABAMA

PATRICIA BIRKETT,)
Administratrix of the Estate of)
JEREMY BIRKETT, deceased,)

Plaintiff,)

v.)

CIVIL ACTION NO.:
CV-2006-462-H

TIMOTHY EUGENE MCCRAY and)
S.E.LUMBER COMPANY,)

Defendants,)

AFFIDAVIT OF BRENTON WOODFIN WARR

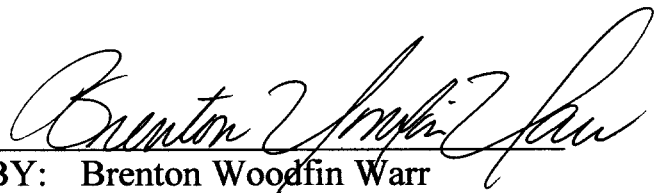
Before me, the undersigned, a Notary Public in and for the state of Alabama,
personally appeared Brenton Woodfin Warr, who under oath, testified as follows:

1. *Bmw* My name is Brenton Woodfin Warr and I reside at 1309 Lakewood Drive,
Bainbridge
Damascus, Georgia 39819. I am over the age of 19 years and I am of sound
mind and body.
2. I have first hand knowledge of that certain suit styled Patricia BIRKETT,
Administratrix of the Estate of Jeremy BIRKETT, deceased, v. Timothy
Eugene McCray and S.E. Lumber Company, filed in the Circuit Court of
Houston County, Alabama and bearing civil action number CV-2006-462-H.
3. I am the President of Southeast Lumber, Inc. (Incorrectly described in the
complaint as “ S. E. Lumber Company”) which is named as a defendant in
this litigation. I can testify from first hand knowledge that Southeast

Lumber, Inc. is a Georgia Corporation with principle place of business located at 320 Ballpark Avenue, Damascus, Georgia 39841.

4. At all times relevant to the motor vehicle accident made the basis of this litigation, Southeastern Lumber< inc. has been a resident citizen of the State of Georgia (meaning at the time of the accident, when the summons and complaint were filed, and at the present time).
5. Southeast Lumber, Inc. has never been a resident of the State of Alabama.

I have read this affidavit and it is true and correct, this the 23 day of August, 2006.

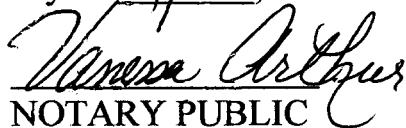

BY: Brenton Woodfin Warr

FOR: S. E. Lumber Company

SUBSCRIBED AND SWORN TO

before me on this the
day of 8/23, 2006.

My commission expires:


NOTARY PUBLIC

March 30, 2008.

EXHIBIT “D”

IN THE CIRCUIT COURT OF HOUSTON COUNTY, ALABAMA

PATRICIA BURKETT,)
Administratrix of the Estate of)
JEREMY BURKETT, deceased,)
)
Plaintiff,)
)
v.)
)
TIMOTHY EUGENE MCCRAY and)
S.E.LUMBER COMPANY,)
)
Defendants,)

CIVIL ACTION NO.:
CV-2006-462-H

AFFIDAVIT OF TIMOTHY EUGENE MCCRAY

Before me, the undersigned, a Notary Public in and for the state of Alabama,
personally appeared Timothy Eugene McCray, who under oath, testified as
follows:

1. My name is Timothy Eugene McCray and I reside at 7445 Kesler Avenue,
Damascus, Georgia 39841. I am over the age of 19 years and I am of sound
mind and body.
2. I have first hand knowledge of that certain suit styled Patricia Burkett,
Administratrix of the Estate of Jeremy Burkett, deceased, v. Timothy Eugene
McCray and S.E. Lumber Company, filed in the Circuit Court of Houston
County, Alabama and bearing civil action number CV-2006-462-H.
3. I was involved in the motor vehicle accident made the basis of the suit
described in paragraph 2 above.

4. At all times relevant to the motor vehicle accident made the basis of this litigation, I have been a resident citizen of Damascus, Georgia (meaning at the time of the accident, when the summons and complaint were filed, and at the present time).
5. I have never been a resident of the State of Alabama.

I have read this affidavit and it is true and correct, this the 23 day of August, 2006.

Timothy Eugene McCray
Timothy Eugene McCray

SUBSCRIBED AND SWORN TO

before me on this the 23
day of August, 2006.

My commission expires:

Sharon Riley
NOTARY PUBLIC

MY COMMISSION EXPIRES JULY 25 2008